



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 29, 1994

Mr. Charles E. Griffith, III  
Deputy City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767-8828

OR94-299

Dear Mr. Griffith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. You received a request from a member of the media for records concerning Brackenridge Hospital, which you forwarded to us. We assigned your letter ID# 25564.<sup>1</sup>

By letter dated March 21, 1994, a reporter asked for various records concerning purchasing and contracting practices of Brackenridge Hospital, information related to investigations of the hospital by the police department and the county attorney's office, grand jury subpoenas for financial or personnel records of the hospital, and other related categories of information. You have referred this matter to us, claiming that some of the materials should not be disclosed to the public.

You assert that several items requested by the reporter's letter are excepted from disclosure by section 552.108 of the Government Code, which applies to records of a law enforcement agency that deal with the detection, investigation, or prosecution of crime. These items are as follows, with the numbers assigned in the reporter's request shown parenthetically:

Memoranda, reports, or correspondence related to grand jury  
subpoenas for Brackenridge Hospital financial or personnel records  
since January 1, 1994. (1.)

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<sup>1</sup>The same reporter made another request by letter of March 25, 1994, to the City of Austin for records related to Brackenridge Hospital, which we addressed in Open Records Letter No. 94-222 (1994).

Records related to investigations of the hospital by the police department and county attorney's criminal investigations of Brackenridge Hospital finances or personnel. (2.)

Records on the offer to or acceptance by hospital employees of trips or other benefits by vendors of supplies used by Brackenridge employees. (5.)

All memoranda or letters related to certain contracts with Baxter Healthcare Division and other Baxter entities. (6.)

You also state that the Austin Police Department is actively investigating allegations of criminal conduct by present and former employees of Brackenridge and enclose a memo from a police officer to the city attorney asking that the city not release documents related to the department's ongoing investigation.

Section 552.108 excepts from required public disclosure:

(a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . .

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution.

Normally section 552.108 applies to law enforcement agencies. *See* Open Records Decision Nos. 493 (1988) at 2; 287 (1981) at 2. However, a non-law enforcement agency may claim section 552.108 to withhold information in its custody that it intends to report to a law enforcement agency or that a law enforcement agency has determined will cause undue interference with law enforcement or prosecution. Open Records Decision No. 493 at 2. Records in the custody of the city government, that are also the subject of a criminal investigation by the police department, may be withheld pursuant to section 552.108 of the Open Records Act. *See* Open Records Decision No. 129 (1976); *cf.* Open Records Decision No. 297 (1981) (city auditor's report of traffic-ticket fixing that resulted in police investigation). The Austin Police Department has moreover requested that the city not release this information. The city may withhold this information under section 552.108 of the Government Code.<sup>2</sup>

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<sup>2</sup>We remind you that section 552.108 is a discretionary exception under the act. *See* Gov't Code § 552.007. Therefore, the city may choose to release to the public some or all of this information with impunity.

By letter of April 18, 1994, you informed us that the Travis County Grand Jury has issued subpoenas for all City of Austin records in the possession of the Austin Police Department. In view of our conclusion as to the application of section 552.108 of the Open Records Act, we need not consider the effect of the grand jury subpoenas on the availability of these records pursuant to the Open Records Act.

You also state that a portion of the documents described by item 4 of the request letter are excepted from disclosure by section 552.107 as records within the attorney-client privilege. Item 4 states as follows:

All Open Records Act requests filed with the City of Austin since Jan. 1, 1994, regarding contracts for physicians at Brackenridge Hospital, and all records supplied in compliance with such requests. Also, any other memoranda or correspondence regarding renegotiation of such contracts or retention of professional services to handle such renegotiations.

The city will provide the requestor with Open Records Act requests previously received by the city regarding "contracts for physicians at Brackenridge Hospital." You believe that information within the second sentence of item 4 consists primarily of communications protected by section 552.107 of the Government Code, as information within the attorney-client privilege.<sup>3</sup>

Section 552.107 excepts information if:

(1) it is information that . . . an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas.

Section 552.107 protects information that reveals client confidences to an attorney, including facts and requests for legal advice, or that reveals the attorney's legal advice. *See* Open Records Decision No. 574 (1990). We have examined the representative samples of information for which you seek section 552.107 protection and conclude that they consist of an attorney's legal advice. Accordingly, the city may withhold this information pursuant to section 552.107 of the Government Code.

Since you do not object to disclosing the remaining information requested by the reporter, we assume that you have made it available to him.

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<sup>3</sup>You assert section 552.101 of the Government Code in connection with the attorney-client privilege. This privilege is most properly asserted in connection with section 552.107 of the act. Open Records Decision No. 574 (1990).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison  
Assistant Attorney General  
Open Government Section

SLG/rho

Ref.: ID# 25564

Enclosures: Open Records Letter No. 94-222  
Submitted documents

cc: Mr. Mike Todd  
Reporter  
Austin American-Statesman  
P.O. Box 670  
Austin, Texas 78767-0670  
(w/o enclosures)